

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO 94 OF 1993

WITH

SPECIAL CIVIL APPLICATION NO 95 OF 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MAKABULKHAN JAMEHERKHAN

Versus

COLLECTOR

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Appearance:

1. Special Civil Application No. 94 of 1993  
MR BN PATEL for Petitioner  
MR PUJARI AGP for Respondent No. 1, 2, 3
2. Special Civil Application No 95 of 1993  
MR BN PATEL for Petitioner  
MR PUJARI AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT  
Date of decision: 08/12/2000

## ORAL JUDGEMENT

Heard the learned advocates. Both these petitions arise of similar facts and involve identical question of law. Both the petitions are, therefore, with the consent of the learned advocates, decided by this common judgment.

The petitioners in both these petitions are the lease holders of the land admeasuring 5 Hectors of the land Survey No. 39 Paiki of village Kotda (Chandgad), Taluka-Palanpur, District-Banaskantha. Both the petitioners were given lease for excavating building stones and lime stones respectively for a period of five years on 15th December, 1990. It appears that both the petitioners made default in payment of amount of royalty, on account of which, by orders dated 3rd December, 1991, made by the District Collector, Banaskantha, the lease were terminated. Feeling aggrieved, both the petitioners preferred appeal before the Director of Geology and Mining under Rule 38 (1) (a) of the Gujarat Minor Mineral Rules, 1966 (hereinafter referred to as 'the Rules'). Both the appeals were partially allowed by orders dated 25th February, 1992 (Annexures-A to the petitions). It was observed that in view of Part-9 (3) of the lease agreement, the lessee was required to be given 60 days' show cause notice before terminating the lease. The said procedure having not been followed, the impugned orders dated 3rd December, 1991, were set aside and the matters were remanded to the District Collector with a direction to ascertain the quantity of materials lifted by the concerned lessee after giving him due notice as observed in paragraph-5 of the order. After the said orders of remand, the District Collector appears to have made survey on 16th May, 1992, and pursuant to the survey report, made orders on 26th May, 1992. In case of the petitioner of Special Civil Application No. 94/93, the amount of royalty was assessed at Rs. 68,396/-. In case of the petitioner in Special Civil Application No. 95/93, the amount of royalty was assessed at Rs.39,125/-. Admittedly, the said orders were made without issuing the show cause notice though directed by the Director under his orders dated 26th February, 1992. Feeling aggrieved, both the petitioners preferred appeal before the Director of Geology and Mining. Pending the said appeal, stay was granted against recovery of the royalty amount determined by the District Collector. It appears that upon an application made by the District Collector, the State Government took the aforesaid interim orders in revision under Rule 41A of the Rules. While considering the said interim orders, under its power of suo-motu revision

conferred under Rule 41A of the Rules, the State Government by its orders dated 6th December, 1992, directed the petitioners to pay the amount of royalty assessed within a period of one month from the date of the order. The Government dismissed the appeal preferred by the petitioners pending before the Director of Geology and Mining and also set aside the interim orders made thereon. Feeling aggrieved, the petitioners-lessees have preferred the present petitions.

It is apparent that the course adopted by the State Government is absolutely illegal. Rule 38 (1) of the Rules confers upon a person aggrieved by an order of the competent authority issued under the rules, right to appeal against such order to the Director. The right to appeal to the Director is thus a statutory right and can not be taken away by exercising revisional power. Rule 41A of the Rules confers powers upon the State Government to take into revision any order passed by the competent officer or by the Director for the purpose of satisfying itself as to the legality or merits of any order passed and to modify, annul or reverse or to pass such order thereon as it may deem fit. In the present case, the Government appears to have exercised its power of suo-motu revision under Rule 41A of the Rules against the interim orders made by the Director and appeals preferred by the present petitioners. The Government was within its power to take the said orders in revision and either to modify, annul or reverse or confirm the same. However, the Government has gone a step further and has dismissed the appeals which were pending before the Director for hearing on merits and decision thereon. In my view, the State Government has certainly usurped the power of the Director to decide the appeals preferred before it on merits and has dismissed the appeals which were yet to be heard. Rule 41A of the Rules does not confer the power upon the State Government to consider and decide the appeal which is preferred before the Director. The State Government has thus acted without jurisdiction and the impugned orders, therefore, require to be quashed and set aside.

In view of the above discussion, both these petitions are allowed. The impugned orders of the State Government dated 5th December, 1992 (Annexure-F to each of the petitions) are quashed and set aside. The impugned orders dated 26th May, 1992 (Annexure-C to each of the petitions) made by the District Collector, Banaskantha, are also quashed and set aside. The District Collector, Banaskantha, shall ascertain the amount of royalty recoverable from each of the

petitioners (lessees) after giving them 60 days' show cause notice as directed by the Director under his orders dated 25th February, 1992 (Annexure-A to each of the petitions), and shall make survey in presence of the respective lessee or his representative. The part of the royalty amount demanded under the impugned orders, and deposited by the petitioners shall be adjusted against any amount of royalty which may be found to be payable by the concerned petitioner. The District Collector shall complete the entire exercise within six months from today. In the event the District Collector fails to complete the assessment proceedings as directed by the Director under his orders dated 25th February, 1992 within six months as directed hereinabove, the part of the royalty amount deposited by the concerned petitioner under the interim order made by this court on 13th April, 1994, shall be refunded to the concerned petitioner.

Both the petitions are allowed in the above terms. Rule nisi issued in each of the petitions is made absolute. The parties shall bear their own costs. Registry shall maintain a copy of this order in both these petitions.

( MS R.M.DOSHIT J )

JOSHI